

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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Howard Levey, John and Susan L. Walter, h/w	:	
<i>and</i>	:	
Allstate Insurance Company	:	
Plaintiffs	:	
	:	Complaint
V.	:	
	:	
Boat America Corporation,	:	
<i>and</i>	:	
Delaware Bay Launch Service, Inc.	:	
Defendants	;	

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**COMPLAINT IN ADMIRALTY**

Plaintiffs Howard Levey, John and Susan Walter, h/w and Allstate Insurance Company, Inc., by their attorneys, Stephen K. Carr and Charles M. Oberly, III, complaining of the defendants respectfully state and allege upon information and belief as follows:

**PARTIES**

1. Individual Plaintiffs are residents and citizens of Pennsylvania.
2. Plaintiff Allstate Insurance Company is a corporation organized under the laws of the State of Illinois having its principal place of business in the State of Illinois.
3. Defendant Boat America Corporation ("BoatU.S.") is a corporation incorporated under the laws of the State of Delaware having its principal place of business in Alexandria, Virginia.
4. Defendant BoatU.S. either itself or through its franchises is licensed to do business in Delaware.

5 Defendant BoatU.S. is engaged, among other things, in providing towing services to its members through its licensees/franchisees.

6 Defendant Delaware Bay Launch Service, Inc. is a corporation incorporated under the laws of the State of Delaware and has its principal place of business in Milford, Delaware.

7. Defendant Delaware Bay Launch Service, Inc. is engaged, among other things, in providing towing services.

### **JURISDICTION AND VENUE**

8 This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1333.

9 Venue is properly laid in this district pursuant to 28 U.S.C. § 1391, the claims in this action arose in this district as more fully set forth herein. Accordingly, all or a substantial part of the events or omissions giving rise to the claims in this action occurred in this district.

### **FACTS**

10. On April 22, 2005, Plaintiff Howard Levey was the owner of a 25 foot Grady White sportfishing vessel, "Seas the Day2", and was a member of BoatU.S.

11. On April 22, 2005, Plaintiffs Levey and Walters departed the Cedar Creek Marina in Milford, Delaware aboard "Seas the Day2" en route to Ocean City, Maryland.

12. Upon entering Delaware Bay, "Seas the Day2" ran aground on a mud shoal.

13. Despite the best efforts of Plaintiffs Levey and Walters, "Seas the Day2" could not be refloated.

14. A call was made to the nearest BoatU.S. representative in the area, co-defendant Delaware Bay Launch, Inc., located in Milford, Delaware.

15 Co-defendant Delaware Launch, Inc. advised Plaintiffs that because of water depth they would not be able to assist until “half tide” in about 4 hours.

16 Despite the passage of more than four hours, co-defendant Delaware Bay Launch, Inc., did not come to the aid of “Seas the Day2”, which eventually was cast against the stone jetty nearby and became a constructive total loss.

17 The United States Coast Guard, responding to a MayDay call from the Plaintiffs, carried out a helicopter medivac rescue of all three Plaintiffs from the beach on which they were stranded and transported them to Cape May, New Jersey, where Plaintiffs Levey and John Walter received Emergency Room treatment and Plaintiff Susan Walter was admitted at the Burdette Tomlin Memorial Hospital.

**FIRST CAUSE OF ACTION AGAINST BOATU.S.**

18. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 17.

19. Plaintiff Howard Levey has been a member in good standing of BoatU.S. since 1981 with an unlimited option.

20. Defendant BoatU.S.’ contract with its members in good standing provides towing services from a licensed towing company 24 hours per day.

21. Defendant BoatU.S.’ contract with its members in good standing provides for ungrounding assistance for a soft grounding.

22. Defendant BoatU.S. breached its contract with Plaintiff Howard Levey in failing to provide towing service through its licensed towing company.

23. Defendant BoatU.S. breached its contract with Plaintiff Howard Levey by failing to provide ungrounding assistance through its licensed towing company.

24. Defendant BoatU.S.'s breach of contract has caused serious and permanent damage to its member Plaintiff Howard Levey.

**SECOND CAUSE OF ACTION AGAINST DEFENDANT BOATU.S.**

25. Plaintiffs Levey and Walters repeat and reallege each and every allegation set forth in paragraphs 1 through 24 as if more fully set forth herein.

26. Defendant BoatU.S. owed Plaintiffs a duty to provide competent towing and ungrounding services to the boat "Seas the Day2" and its occupants through its licensed towing company, Delaware Bay Launch, Inc.

27. Defendant BoatU.S. through its licensed towing company was negligent and otherwise failed to exercise due care in carrying out its duty to provide competent towing and ungrounding services.

28. As a result of defendant BoatU.S.' negligence, Plaintiffs Levey and Walters have suffered personal injuries, pain and suffering, and economic losses as a result of the destruction of "Seas the Day2".

**THIRD CAUSE OF ACTION AGAINST DEFENDANT DELWARE BAY LAUNCH, INC.**

29. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 28 of the Complaint as if more fully set forth herein.

30. Defendant Delaware Bay Launch, Inc., as a licensed towing company of defendant BoatU.S., owed a duty to Plaintiffs to use due care in performing its towing and ungrounding services.

31. Defendant Delaware Bay Launch, Inc., was negligent and otherwise breached its duty to use due care in performing its towing and ungrounding services.

32. As a result of defendant Delaware Bay Launch, Inc.'s negligence, Plaintiffs Levey and Walters have suffered serious permanent personal injuries, pain and suffering, and economic losses as the result of the destruction of "Seas the Day2."

**FOURTH CAUSE OF ACTION AGAINST DEFENDANTS BOATU.S. AND  
DELAWARE BAY LAUNCH, INC.**

33. Plaintiff Allstate Insurance Company repeats and realleges each and every allegation set forth in paragraphs 1 through 32 of the Complaint as if more fully set forth herein.

34. Plaintiff Allstate Insurance Company paid Plaintiff Levey a claim under his homeowners insurance coverage for the loss of his boat.

35. Total damages sustained by Plaintiff Allstate Insurance Company as a result of this claim were \$45,483.75.

36. Plaintiff Allstate Insurance Company sustained these damages as the result of the negligence of Defendant BoatU.S. and its licensed towing company Defendant Delaware Bay Launch, Inc. in failing to carefully and properly perform their duty of providing towing and ungrounding services to the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against the defendants, jointly and severally, personal injuries, pain and suffering, and economic losses in excess of \$75,000, plus interest, attorneys' fees, litigation expenses, prejudgment and post judgment interest, costs and such other and further relief as may be just and proper.

**Respectfully submitted,**

**OBERLY, JENNINGS, & RHODUNDA**

**By:**

*Charles M. Oberly, III*

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**Charles M. Oberly, III (743)  
1220 Market Street, Suite 710  
P.O. Box 2054  
Wilmington, DE 19899-2054  
Attorney for Plaintiffs**

Dated: 8/17/2006

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

**Howard Levey, John and Susan L. Walter, h/w and Allstate Insurance Company**

(b) County of Residence of First Listed Plaintiff **Bucks County**  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

**Charles M. Oberly, III, Esq. 302/576-2000  
1220 Market St., P.O.Box 2054, Wilms., DE 19899**

**DEFENDANTS**

**Boat American Corporation and Delaware Bay Launch Service, Inc.**

County of Residence of First Listed Defendant **Fairfax County**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |  |   |  |
|---|--|---|--|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1    | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5                    |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6                    |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

**Admiralty tort claim**

Brief description of cause:

**Failure to provide competent towing and ungrounding services in navigable waters**

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ **75,000.00**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

8/17/06

Charles M. Oberly III

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06 - - 510

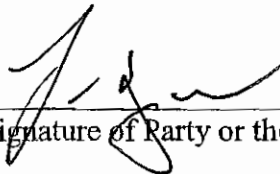
**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 3 COPIES OF AO FORM 85.

8-17-06

(Date forms issued)



(Signature of Party or their Representative)

Frank Joyce / Parcels, LLC.

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action